

Exhibit D

Page 1

1 SUPERIOR COURT OF NEW JERSEY
2 LAW DIVISION: MIDDLESEX COUNTY
3 DOCKET NO. MID-L-006651-16ASL
4 MID-L-007336-16AS
5 APPELLATE DOCKET NO. _____

6 DWAYNE JOHNSON,) TRANSCRIPT OF
7 Plaintiff,) TRIAL
8 v.)
9 AMERICAN INTERNATIONAL,)
10 INDUSTRIES, et al.,)
11 Defendants.)
12)
13 MARGARET R. LANGLEY LASHLEY AND)
14 EDWARD G. LASHLEY,) (VOLUME 1 of 2)
15 Plaintiffs,)
16 v.)
17 AMERICAN INTERNATIONAL INDUSTRIES,)
18 et al.,)
19 Defendants.)
20)
21)
22)
23)
24)
25)

26 Place: Middlesex Courthouse
27 56 Paterson Street
28 New Brunswick, New Jersey 08903
29 Date: Wednesday, March 11, 2020
30 9:14 a.m.
31 (Volume 1 of 2)
32 (Pages 1 - 200)

33 BEFORE:
34 HON. ANA C. VISCOMI, J.S.C. and JURY

35 TRANSCRIPT ORDERED BY:
36 JOSEPH MANDIA, ESQ.
37 (Simon Greenstone Panatier)
38 5 Penn Plaza
39 Suite 2308
40 New York, New York 10001

	Page 2	Page 4
1 APPEARANCES:		
2 JOSEPH MANDIA, ESQ.		
3 SIMON GREENSTONE PANATIER		
5 Penn Plaza		
Suite 2308		
4 New York, New York 10001		
-and-		
5 STUART PURDY, ESQ.		
SIMON GREENSTONE PANATIER		
6 3780 Kilroy Airport Way		
Suite 540		
7 Long Beach, California 90806		
Attorneys for Plaintiffs,		
8 Dwayne Johnson, and		
Margaret R. Langley Lashley and		
9 Edward G. Lashley		
10		
11 ROBERT E. THACKSTON, ESQ.		
LATHROP GPM LLP		
12 2101 Cedar Springs Road		
Suite 1400		
13 Dallas, Texas 75201		
-and-		
14 ROY F. VIOLA, JR., ESQ.		
HAWKINS, PARNELL & YOUNG, LLP		
15 600 Lexington Avenue		
8th Floor		
16 New York, New York 10022		
Attorneys for Defendant,		
American International Industries		
17		
18		
19		
20		
21 ANDREA F. NOCKS, CCR, CRR		
PRIORITY ONE		
22 290 West Mount Pleasant Avenue		
Livingston, New Jersey 07039		
(718) 983-1234		
E-mail: p1steno@veritext.com		
24		
25 Job No. NJ4011555		
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3 DIRECT CROSS REDIRECT RECROSS		
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8 BY MR. PURDY 112		
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10 JACQUELINE MOLINE		
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1 COURT OFFICER: Jury entering.		
2 (Jury enters.)		
3 THE COURT: Good morning, everyone. Please		
4 be seated. Make sure cell phones are turned off.		
5 How about we ask Dr. Compton to return.		
6 Good morning, Dr. Compton.		
7 Today is March 11, 2020. This is the		
8 continued trial in the matter of Margaret and Edward		
9 Lashley versus American International Industries and		
10 Dwayne Johnson versus American International		
11 Industries.		
12 Can I have appearances, please, for the		
13 plaintiffs.		
14 MR. PURDY: Yes. Good morning again, your		
15 Honor. Stuart Purdy for the plaintiffs.		
16 MR. MANDIA: Good morning, your Honor.		
17 Joseph Mandia for the plaintiffs.		
18 THE COURT: Thank you.		
19 For the defendants.		
20 MR. THACKSTON: Good morning, your Honor.		
21 Robert Thackston and Roy Viola.		
22 THE COURT: Thank you very much.		
23 So, members of the jury, as you may recall,		
24 we are in the plaintiffs' case and we're now in		
25 cross-examination of the plaintiffs' expert witness,		

2 (Pages 2 - 5)

<p style="text-align: right;">Page 194</p> <p>1 Q And they --</p> <p>2 A If they have both those types of data.</p> <p>3 Q And some of the registries have occupational</p> <p>4 codes; they have a number for, say, 53 different</p> <p>5 occupations, and they use the occupational codes and</p> <p>6 compare the cancer instances to the different</p> <p>7 occupations, right?</p> <p>8 A Right. And then some will be more sophisticated</p> <p>9 in terms of actual exposures rather than a job code</p> <p>10 because a job code may not be, tell the whole story.</p> <p>11 Q Generally speaking, the epidemiological</p> <p>12 studies that have considered whether there are</p> <p>13 occupations that have an increased risk of mesothelioma</p> <p>14 have identified certain occupations that consistently</p> <p>15 identified certain occupations that have an increased</p> <p>16 risk of mesothelioma, right?</p> <p>17 A In general, yes, particularly the construction</p> <p>18 trades and the shipbuilding industry.</p> <p>19 Q Insulators, pipefitters, plumbers, those are</p> <p>20 ones that have been shown to have a statistically</p> <p>21 significant increased risk of mesothelioma, right?</p> <p>22 A Correct.</p> <p>23 Q And there's never been an epidemiological</p> <p>24 study that has concluded that hairdressers or barbers</p> <p>25 have a statistically significant increased risk of</p>	<p style="text-align: right;">Page 196</p> <p>1 A He's a Ph.D. microscopist who's within the</p> <p>2 department of pathology.</p> <p>3 Q He's not a medical doctor?</p> <p>4 A Correct.</p> <p>5 Q This is titled, Mesothelioma Associated With</p> <p>6 the Use of Cosmetic Talc, right?</p> <p>7 A Correct.</p> <p>8 Q And I think you said on direct, and correct</p> <p>9 me if I paraphrase it wrong, but there wasn't any kind</p> <p>10 of epidemiological study on cosmetic talc and</p> <p>11 mesothelioma, so this, you felt this was going to be</p> <p>12 the first one, right?</p> <p>13 A What I said is I was unaware of any study on</p> <p>14 cosmetic talc end users, apart from a couple of case</p> <p>15 reports, one of -- some of which I showed on that slide</p> <p>16 earlier. So this was the first case series, meaning</p> <p>17 multiple cases that had been compiled of folks who used</p> <p>18 cosmetic talc.</p> <p>19 Q And you compared it to the study, you have 33</p> <p>20 people and you compared it to a study done by</p> <p>21 Dr. Wagner, W-a-g-n-e-r, who studied 33 people who had</p> <p>22 mesothelioma in South Africa?</p> <p>23 A I didn't compare it. I used it as a number</p> <p>24 because that had been the number that was used when</p> <p>25 they had that first study that showed an association</p>
<p style="text-align: right;">Page 195</p> <p>1 mesothelioma, has there?</p> <p>2 A Not that I recall specifically, no.</p> <p>3 Q And are you familiar with the epidemiology,</p> <p>4 the epidemiological study of cancer in hairdressers</p> <p>5 that, an IARC study, that looked at whether their</p> <p>6 cancer is related to the colorings used by a</p> <p>7 hairdresser?</p> <p>8 A You'd have to show it to me. I'm not sure.</p> <p>9 Q Let me ask you about your paper. Do you need</p> <p>10 a copy of your paper?</p> <p>11 A If you're going to ask me specific questions, yes.</p> <p>12 Q Do you recognize this as the paper that you</p> <p>13 wrote along with the other folks that are on --</p> <p>14 A Yes.</p> <p>15 Q And I won't pronounce their names because</p> <p>16 they're hard to pronounce, but you're welcome to read</p> <p>17 them out if you'd like.</p> <p>18 A I'd be happy to read them out. It's Kristin</p> <p>19 Bevilacqua, Maya Alexandri and Ronald Gordon.</p> <p>20 Q So Dr. Gordon is the same Dr. Gordon who was</p> <p>21 one of the authors of the Gordon Fitzgerald Millette</p> <p>22 paper?</p> <p>23 A Correct.</p> <p>24 Q And he's a Ph.D. pathologist at Mount Sinai,</p> <p>25 right?</p>	<p style="text-align: right;">Page 197</p> <p>1 between asbestos and mesothelioma, and so I picked 33</p> <p>2 for that purpose. I wasn't comparing the 33 in my</p> <p>3 paper to the 33 in Dr. Wagner's paper.</p> <p>4 Q They were studying people who were diagnosed</p> <p>5 with mesothelioma, and one of the authors on that study</p> <p>6 was one of the physicians who had, whose patients had</p> <p>7 died from mesothelioma, right?</p> <p>8 A To be honest, I don't know the role. I think</p> <p>9 Wagner is a pathologist. I don't know who the others</p> <p>10 that had treated the patients were. I wasn't around in</p> <p>11 1960, so I don't know.</p> <p>12 Q Me either. Barely.</p> <p>13 So this paper, though, is not, does not</p> <p>14 relate to any patient that you've ever treated, no one</p> <p>15 with whom you've had a physician/patient relationship,</p> <p>16 right?</p> <p>17 A No. These were all individuals -- some of the</p> <p>18 individuals I had the opportunity to interview, but I</p> <p>19 was not their treating physician.</p> <p>20 Q So these are all cases that came to you by</p> <p>21 way of your legal consultations, right?</p> <p>22 A Correct.</p> <p>23 Q And it says that the case histories that you</p> <p>24 have here -- by the way, the premise of your paper is</p> <p>25 that these are cases of mesothelioma, either pleural or</p>

<p style="text-align: right;">Page 198</p> <p>1 peritoneal, that were the only known exposure is 2 cosmetic talc, right?</p> <p>3 A As best we could ascertain, that that was their 4 only exposure. They did not have any other exposure 5 that I was able to glean from the materials I had been 6 provided.</p> <p>7 Q But now let's talk about that a little bit.</p> <p>8 Materials, you mention here, "Data gathered 9 for 33 patients was gleaned from individuals' medical 10 records and sworn testimony, deposition transcripts of 11 individuals." Right?</p> <p>12 A Correct.</p> <p>13 Q Now, the only medical records you would have 14 had would have been medical records sent to you 15 generally by the firms that retained you, right?</p> <p>16 A Yes, that are retained through a medical record 17 service that in general, or sometimes, I don't know how 18 the medical records are all obtained. I know some of 19 them have the medical record service cover letters, so 20 they're obtained and then they're sent to me.</p> <p>21 Q Doctors seem to have some centralized access 22 to medical records now, they type it up when you go in 23 to see them.</p> <p>24 You didn't have access to anyone's medical 25 files other than something that was sent to you in the</p>	<p style="text-align: right;">Page 200</p> <p>1 CERTIFICATION</p> <p>2</p> <p>3 I, ANDREA F. NOCKS, C.S.R., License Number 4 30XI00157300, a Certified Court Reporter, in and for the 5 State of New Jersey, do hereby certify the foregoing to 6 be prepared in full compliance with the current 7 Transcript Format for Judicial Proceedings and is a true 8 and accurate non-compressed transcript to the best of my 9 knowledge and ability.</p> <p>10 <i>Andrea Nocks CCR CRR</i></p> <p>11 ANDREA F. NOCKS MARCH 11, 2020</p> <p>12 CERTIFIED COURT REPORTER</p> <p>13 MIDDLESEX COUNTY COURTHOUSE</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 199</p> <p>1 context of litigation?</p> <p>2 A First of all, there's no centralized medical 3 center like that in this country. Everyone's hospital 4 has a proprietary system. And unless you have direct 5 patient contact with an individual, it's -- you don't 6 look up another patient, and I certainly would not have 7 access to another hospital's electronic medical 8 records. These were all sent to me by plaintiffs' 9 counsel.</p> <p>10 Q And it says, "Cases reviewed by occupational 11 physician with experience evaluating asbestos exposure 12 in thousands of patients." And that's you, right?</p> <p>13 A Correct.</p> <p>14 Q And then, "Exposure data obtained from sworn 15 testimony about the cases, which included questioning 16 regarding all sources of asbestos exposure. This 17 included family, occupational histories, parents and 18 anyone cohabitating with the patient were all cases to 19 assess potential asbestos exposure, hobbies," et 20 cetera, right?</p> <p>21 A Correct.</p> <p>22 (Continuation of the day's proceedings in 23 Volume 2.)</p> <p>24</p> <p>25</p>	

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2 LAW DIVISION: MIDDLESEX COUNTY
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8 v.)
9 AMERICAN INTERNATIONAL,)
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11 Defendants.)
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13 MARGARET R. LANGLEY LASHLEY AND)
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15 Plaintiffs,)
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26 Place: Middlesex Courthouse
27 56 Paterson Street
28 New Brunswick, New Jersey 08903
29 Date: Wednesday, March 11, 2020
30 9:14 a.m.
31 (Volume 2 of 2)
32 (Pages 201 - 238)

33 BEFORE:
34 HON. ANA C. VISCOMI, J.S.C. and JURY

35 TRANSCRIPT ORDERED BY:
36 JOSEPH MANDIA, ESQ.
37 (Simon Greenstone Panatier)
38 5 Penn Plaza
39 Suite 2308
40 New York, New York 10001

	Page 202		Page 204
1 APPEARANCES:		1 E X H I B I T S	
2 JOSEPH MANDIA, ESQ.		2 MARKED FOR IDENTIFICATION	
3 SIMON GREENSTONE PANATIER		3 NO. DESCRIPTION PAGE	
5 Penn Plaza		4 Plaintiffs' Exhibit Stimuli to the Revision 121	
Suite 2308		1070 Process Modernization of	
4 New York, New York 10001		5 Asbestos Testing by U.S.P.	
-and-		Plaintiff's Exhibit Executive Summary of the 148	
5 STUART PURDY, ESQ.		6 1076 Interagency Working Group on	
SIMON GREENSTONE PANATIER		Asbestos in Consumer	
6 3780 Kilroy Airport Way		7 Products	
Suite 540		Plaintiffs' Exhibit J4-1 Test method 129	
7 Long Beach, California 90806		8 1471 Plaintiffs' Exhibit Reliance materials 155	
Attorneys for Plaintiffs,		9 1729	
Dwayne Johnson, and			
Margaret R. Langley Lashley and			
Edward G. Lashley			
10 ROBERT E. THACKSTON, ESQ.		10	
LATHROP GPM LLP		11	
12 2101 Cedar Springs Road		12 E X H I B I T S	
Suite 1400		13 MARKED INTO EVIDENCE	
13 Dallas, Texas 75201		14 NO. DESCRIPTION PAGE	
-and-		15 Court Exhibit C-1 Juror question 166	
14 ROY F. VIOLA, JR., ESQ.		Court Exhibit C-2 Juror question 167	
HAWKINS, PARNELL & YOUNG, LLP		16 Court Exhibit C-3 Juror question 168	
15 600 Lexington Avenue			
8th Floor			
16 New York, New York 10022			
Attorneys for Defendant,			
American International Industries			
17		17	
18		18	
19		19	
20		20	
21 ANDREA F. NOCKS, CCR, CRR		21	
PRIORITY ONE		22	
22 290 West Mount Pleasant Avenue		23	
Livingston, New Jersey 07039		24	
(718) 983-1234		25	
E-mail: p1steno@veritext.com			
24 Job No. NJ4011555			
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1 INDEX		1 (Continuation from Volume 1.)	
2		2 BY MR. THACKSTON:	
3 DIRECT CROSS REDIRECT RECROSS		3 Q Now, because you got these cases in the	
4 WITNESSES		4 context of litigation, presumably other lawyers would	
5 FOR THE PLAINTIFF:		5 have them, defense lawyers who were involved in the	
6 STEVEN COMPTON		6 case who represented companies who were sued, right?	
7 BY MR. THACKSTON 6		7 As far as you know, all the information you have was	
8 BY MR. PURDY 112		8 information that was shared among all those in the	
9		9 case?	
10 JACQUELINE MOLINE		10 A I would assume so.	
11 BY MR. THACKSTON 160		11 Q And you've identified, both by case number	
12		12 and in your deposition, you take the position that	
13		13 you're not going to tell anybody what cases they are	
14		14 because that's confidential, right?	
15		15 A It's standard medical practice not to identify	
16		16 individuals by names, and in the same way that, I	
17		17 believe we discussed on Monday we don't discuss company	
18		18 names. But certainly I have never in my life, and I	
19		19 read thousands of articles in the medical literature,	
20		20 have never seen anyone's name ever put in a paper.	
21		21 Sometimes it'll be initials. But it has never been	
22		22 that an individual's name is put into a medical article	
23		23 that's published in the medical literature unless	
24		24 perhaps it was -- the sole case might be in the guy who	
25		discovered that H. Pylori caused stomach cancer and he	

2 (Pages 202 - 205)

<p style="text-align: right;">Page 206</p> <p>1 wrote about it because he gave it to himself. 2 That's, I think, the only time that the name 3 of the person was put in an article that I've read in 4 thousands of articles.</p> <p>5 Q Okay. Well, let me rephrase my question. 6 Other than putting someone's name in the 7 article, no -- you've taken the position that no 8 identifying information can be shared with anyone about 9 who these people were; for example, for case number 10 one, you haven't made available any information that 11 would allow only the people who were involved in the 12 case to understand who case one may have been, right?</p> <p>13 A For the purposes of this paper, no. We 14 de-identified it, as is standard medical practice and 15 is standard practice when we publish the paper, so that 16 the medical community would not have access to the 17 names of these individuals.</p> <p>18 Q Well, and I guess the significance of that is 19 somebody who picks up this paper and reads it and sees 20 that the allegation is that the only known exposure to 21 asbestos is cosmetic talc, there's no way for anybody 22 to look behind that conclusion if they don't have any 23 idea who the people are, right?</p> <p>24 A The medical literature is filled with articles 25 where people state their opinions and state their best</p>	<p style="text-align: right;">Page 208</p> <p>1 and stop there, but to really understand how someone 2 could have an exposure and go beyond just saying what 3 do you do or who do you live with, but ask about other 4 things. And I think I stated that many times in this 5 article and I certainly use that as my conclusion.</p> <p>6 Q Well, as you know from Dr. Compton's testing 7 of the Montana talc samples, all cosmetic talc didn't 8 necessarily have any asbestos in it, right?</p> <p>9 A From Dr. Compton's testing of the three finished 10 bottles, all three of the finished product that he 11 tested that I saw had asbestos in it. If you're asking 12 me from the samples that were provided to him from the 13 mine, not all of them had asbestos in it, that is 14 correct. But the finished products all did.</p> <p>15 Q The 30-year old finished product?</p> <p>16 A I don't know the number of years.</p> <p>17 Q And you say that you confirm, based on your 18 knowledge, that the people who you're reporting on had 19 no other exposure to asbestos, right?</p> <p>20 A As best as I could ascertain.</p> <p>21 Q And one of the -- one of the articles that 22 you cited talks about the fact that the Italian 23 registry, the Italian registry that keeps up with 24 different cancers, mentioned that it had a comment 25 about some people that had mesothelioma who were</p>
<p style="text-align: right;">Page 207</p> <p>1 information. In the same way that we talked about a 2 paper where you were quoting me lines earlier and it 3 was someone's opinion that was being quoted that I 4 might not agree with that would occur in a paper.</p> <p>5 That's standard in medical papers. You don't 6 go back and say here's the people, you can go evaluate 7 them. That's not done.</p> <p>8 Q Well, in this particular case, now you 9 believe that the paper can be cited as evidence that 10 there's asbestos in cosmetic talc and that causes 11 mesothelioma, right?</p> <p>12 A The point of my paper is to show that in 13 individuals for whom a comprehensive exposure history 14 was taken that show that they had exposure to cosmetic 15 talc, that we can think about the fact that cosmetic 16 talc contains asbestos.</p> <p>17 And as has been shown by studies of cosmetic 18 talc and it's published in the literature and that 19 because we know that there is asbestos present in 20 cosmetic talc, we can think about that as a source of 21 mesothelioma. And one of the goals --</p> <p>22 Q Sorry. I didn't mean to interrupt.</p> <p>23 A -- is truly to emphasize that one must take a 24 comprehensive history and not just ask someone's job 25 and not just ask if their spouse worked with asbestos</p>	<p style="text-align: right;">Page 209</p> <p>1 hairdressers, right?</p> <p>2 A Correct.</p> <p>3 Q And it said we suspect that that was from 4 asbestos in hair dryers, right?</p> <p>5 A That's what they had said, it was a possibility.</p> <p>6 And it was also clear they never made any mention of 7 asking about cosmetic talc.</p> <p>8 Q This was published what, in the last three or 9 four years?</p> <p>10 A I'm sorry, which was?</p> <p>11 Q The Italian registry with that comment.</p> <p>12 A You're giving me more credit than I'm due, sir. I 13 don't remember the year that they published that 14 particular paper. That's reference Number 51, that was 15 published eight years ago.</p> <p>16 Q Were you aware that there was asbestos in 17 hair dryers?</p> <p>18 A In certain hair dryers, I have heard that it was 19 in some hair dryers. I don't know which ones and don't 20 know if they were in Italian hair dryers.</p> <p>21 Q You don't know what? I'm sorry.</p> <p>22 A I don't know if they were in Italian hair dryers.</p> <p>23 Q And when you were asked about asbestos in 24 hair dryers, you said you don't think all hairdressers 25 necessarily had hair dryers, did you?</p>

3 (Pages 206 - 209)

<p style="text-align: right;">Page 210</p> <p>1 A Not all of them might have had handheld. They may 2 have had the sit in the chair with the curlers in your 3 hair kind of hair dryers that you see from the 1950s. 4 Q Do you know whether both contained asbestos 5 in the 1970s and 1980s? 6 A I don't know at what point there was a conversion 7 to the handheld. 8 Q I've handed you a case report entitled, 9 Peritoneal Mesothelioma From Asbestos in Hair Dryers, 10 James Dahlgren, International Journal of Occupational 11 and Environmental Health, 2015. Is that an article 12 you're familiar with? 13 A I don't think I've ever seen this. This is 14 actually -- no, I haven't seen this. 15 Q I've handed you a document titled, United 16 States Consumer Product Safety Commission New 17 Information on Hair Dryers CSP -- CPSC Hot-Line Swamped 18 By Calls, release date April 17, 1979. 19 Were you familiar with any of the details of 20 the Consumer Product Safety Commission of recall of 21 asbestos-containing hair dryers in the late 1970s? 22 A No. 23 Q I've showed you an article titled, Asbestos 24 Emissions From Handheld Hair Dryers by William 25 Hallenbeck of the School of Public Health, University</p>	<p style="text-align: right;">Page 212</p> <p>1 Q And is the document I just showed you that 2 testimony, written testimony by Jacqueline Moline on 3 Northwell Health stationery? 4 A Yes. 5 Q And it says, "Tuesday, before the Committee 6 on Oversight and Reform Subcommittee on Economic and 7 Consumer Policy, United States House of 8 Representatives, examining" -- I'm sorry -- "examining 9 carcinogens in talc and best methods for asbestos 10 detection." Right? 11 A That was the title of the session. I didn't come 12 up with that session title. That wasn't the title 13 of -- we didn't have titles for our talk. That was the 14 title of what the committee had decided. 15 Q Thank you. 16 So your testimony begins on the next page, 17 "Good afternoon, Chairman," et cetera, right? 18 A Good luck with that one. It's actually much 19 easier to pronounce than it is. 20 Q Check that out. Chairman, chair -- 21 A It's Krishnamoorthi. 22 Q It's -- 23 A Once you got it, it's easy to say. It's 24 Krishnamoorthi. 25 Q Well, I won't try to say that gentleman's</p>
<p style="text-align: right;">Page 211</p> <p>1 of Illinois Medical Center, from Environmental 2 Management, Volume 5, appears to be 1981. 3 Are you familiar with that article? 4 A No. 5 Q You testified that you've done a lot of work 6 with NIOSH? 7 A I am -- yes. Particularly in my capacity with the 8 World Trade Center program. 9 Q Are you familiar with the testing of hair 10 dryers for asbestos emission done by NIOSH and United 11 States Consumer Product Safety Commission in 1979? 12 A No. 13 Q I think you also testified on direct about 14 having given testimony before congress recently on 15 issues relating to whether there's asbestos in cosmetic 16 talc, correct? 17 A I talked about two times I testified in congress; 18 one was related to with the World Trade Center and one 19 of them was related to cosmetic talc. 20 Q And specifically on the issue of cosmetic 21 talc, have you seen written testimony -- well, actually 22 you submitted it, so I guess you have. 23 Did you submit to this congressional panel 24 what would be your testimony in written form? 25 A Yes.</p>	<p style="text-align: right;">Page 213</p> <p>1 name. 2 A I saved you. I saved you that time. Since I 3 practiced saying it since I had to say it out loud. 4 Q I do appreciate that. 5 You gave an example, you said, "It could be 6 helpful to hear about an individual to better 7 understand how cosmetic talc usage might impact one's 8 health. Miss D was a 66-year old woman who developed 9 shortness of breath," et cetera, right? 10 A Correct. 11 Q And you went on to give some information 12 about this person that you -- this was an actual person 13 in this case that you were consulting on, right? 14 A Correct. 15 Q And her name didn't start with a D, but you 16 just -- 17 A I made that up. 18 Q All right. So it says she worked in the 19 textile industry, worked with polyester cotton yarn, 20 worked for tobacco company as a packer, right? 21 A Correct. 22 Q Has no known exposure to asbestos in these 23 jobs or from home construction activities, right? 24 A Correct. 25 Q Now, you were engaged by plaintiffs' lawyers</p>

<p style="text-align: right;">Page 214</p> <p>1 in these cases, and you wrote this article, and you 2 testified in your deposition that you didn't tell them 3 that you were writing this article, right? 4 A I'm sorry, I didn't tell who? 5 Q You didn't tell the plaintiffs' lawyers who 6 had hired you that you were writing an article? 7 A When I was in the process of writing the article? 8 Q Right. 9 A No. I did not. I did not confer with them. 10 Q And by the way, they were there, you recall 11 that one of the plaintiffs' lawyers was there at the 12 hearings sitting behind you? 13 A There were lawyers in the congressional hearing 14 room, yes. They were aware that I was testifying. 15 Q I mean, they were there with you when you 16 were testifying, right? 17 A Well, the way that sounds isn't quite right. I 18 happened to be there and they were also there. 19 Q Okay. 20 A I didn't go with them there. They didn't engage 21 me to go there. I was asked by the committee to 22 testify. 23 Q I understand. I'm not saying they gave you a 24 ride or anything, I'm -- 25 A They didn't hire me to go there. I didn't get</p>	<p style="text-align: right;">Page 216</p> <p>1 that because I'm making the argument that the only way 2 they could have gotten mesothelioma is from cosmetic 3 talc and I'm saying they weren't exposed to anything 4 else so I just want to double-check with you on that? 5 You didn't do that, did you? 6 A No. Which is why I said to the best of my ability 7 I had no information that they had other exposures. I 8 did not contact any after or during, during the writing 9 of this paper.</p> <p>10 THE COURT: Let's take a five-minute break. 11 Members of the jury, you're going to go to 12 the jury room here on this floor. Leave your notebooks 13 here.</p> <p>14 Remember all the instructions I've been 15 providing to you. We'll pick you up in five. 16 Thank you. 17 (Jury exits.) 18 (Recess: 3:34 p.m. to 3:47 p.m.) 19 COURT OFFICER: Remain seated. Jury 20 entering. 21 (Jury enters.) 22 THE COURT: Please be seated. Make sure cell 23 phones are turned off. 24 Mr. Thackston, whenever you're ready. 25 MR. THACKSTON: Thank you, your Honor.</p>
<p style="text-align: right;">Page 215</p> <p>1 paid for my testimony. 2 Q I understand. But there were plaintiffs' 3 lawyers there who have retained you, who retained you 4 in this case; somebody from the Simon Greenstone 5 Panatier firm was there during your congressional 6 testimony sitting right behind you, right? 7 A Congress is open to the public. Anyone who may 8 want to go watch how our Government is supposed to work 9 is welcomed to sit in there and anyone is welcome to 10 enter the Capitol. There happened to be folks 11 including someone from Mr. Purdy's firm there. I was 12 not aware he was going to be there. 13 Q Doctor, again, I'm not implying an ill 14 motive. I'm just asking whether anybody from Simon 15 Greenstone was there. 16 A True, true. 17 Q They were there. They heard you testify. 18 And this conclusion that you reach that none 19 of the people in these cases was exposed to any other 20 asbestos, you didn't -- before or after you published 21 the paper you never contacted the lawyers involved who 22 had hired you and said look, I'm going to make this 23 assertion in this paper that they weren't exposed to 24 anything else, do you have anything to the contrary to 25 that, I just want to make sure that I'm right in saying</p>	<p style="text-align: right;">Page 217</p> <p>1 BY MR. THACKSTON: 2 Q Dr. Moline, I'm handing you a report of yours, 3 that you wrote to Simon Greenstone, May 5, 2016, and 4 we've marked out the personal identifying information 5 but -- well, not all of it. It's a very generic name, 6 though. 7 Could you glance at this? This has got your 8 letterhead on it, and I believe it's signed, yes, on 9 page 19, you signed it, right? 10 A Yes. I would have signed it on -- on page 19, you 11 said? Yes. 12 Q Page 19. 13 Anyway, so this, I know you don't want to 14 identify by name and we're not identifying by name, 15 we're just identifying by the case, and you gave an 16 example before congress and you gave an example in your 17 written testimony, was the example that you gave in 18 your written testimony and before congress one of the 19 cases from your article? 20 MR. PURDY: Objection, your Honor. 21 THE COURT: Sidebar. 22 (Sidebar.) 23 MR. PURDY: The objection is -- 24 THE COURT: Louder. 25 MR. PURDY: The objection is I think this is</p>

<p style="text-align: right;">Page 218</p> <p>1 a very not so back-door attempt to get the identities 2 of the person in the study. Mr. Thackston tried to do 3 that at deposition, was shut down. She was directed to 4 the legal staff of the hospital. To my knowledge, he 5 (inaudible). So even in old reports in isolation, but 6 to try to patch them up through the back door is in 7 violation of the paper. When she put together written 8 background information of the paper, this is 9 (inaudible).</p> <p>10 THE COURT: You had access to the unredacted?</p> <p>11 MR. THACKSTON: Yes.</p> <p>12 THE COURT: So you know the identity of this 13 person?</p> <p>14 MR. THACKSTON: Yes. It's a case we're 15 involved in. We're the defendant.</p> <p>16 THE COURT: So how, tell me the purpose of 17 what you're seeking to do now.</p> <p>18 MR. THACKSTON: The purpose, your Honor, 19 is that her testimony is that these are litigation 20 cases so everything she has, I have. It's all public. 21 I don't want anything that's not public information and 22 I'm not trying to identify, why would I want to 23 identify the person?</p> <p>24 THE COURT: Didn't that question you just 25 asked seek to identify the person?</p>	<p style="text-align: right;">Page 220</p> <p>1 I have no issue with you cross-examining 2 individually with regard to all of the different 3 reports that you have or that she may have referenced 4 in that paper that she co-authored, but seeking to 5 identify is inappropriate and so I'm not going to 6 permit that.</p> <p>7 MR. THACKSTON: I'm not going to identify the 8 person at all.</p> <p>9 THE COURT: No, but that question would seek 10 to identify to you, and that I'm not going to permit. 11 I don't have any issue with individual questions, but 12 that question I'm not going to allow.</p> <p>13 MR. THACKSTON: Well, I'm going to try -- I'm 14 not exactly sure what I'm allowed to do, but I'll try 15 my best to --</p> <p>16 THE COURT: Well, hold on. What I'm saying 17 is I have no issue with you cross-examining with regard 18 to any report that you have, any person that's 19 mentioned by type or case of description in her study, 20 in her published paper or the testimony she gave to 21 congress.</p> <p>22 But you're asking Dr. Moline to testify as to 23 whether this person is that person that you referred 24 to, that I will not permit because that is seeking the 25 identification of who that person may be to you, and</p>
<p style="text-align: right;">Page 219</p> <p>1 MR. THACKSTON: Not the person, but the case. 2 We can call it case B, right? It's not a matter of --</p> <p>3 THE COURT: You mean you want to know whether 4 this is Miss D that she testified about?</p> <p>5 MR. THACKSTON: Yes.</p> <p>6 THE COURT: Well, then that would be 7 identifying the person to you.</p> <p>8 MR. THACKSTON: Exactly. Well, she should 9 identify the person to me.</p> <p>10 THE COURT: Why?</p> <p>11 MR. THACKSTON: Well, because she made a 12 representation in the public literature that there's no 13 other exposure to asbestos, right? Well, I'm in the 14 case and I know that not to be true. And I'm not 15 trying to malign her about it, but she's -- her 16 protocol didn't involve trying to get any other 17 information and whether there is information from 18 public sources that (inaudible). I should be entitled 19 to cross-examine her on that. But otherwise, it's 20 completely (inaudible). I'm not saying she did 21 anything wrong. I'm just saying based on your 22 methodology, you didn't know this woman has a sworn 23 complaint saying she was exposed to thermal insulation 24 at her workplace.</p> <p>25 THE COURT: Thank you.</p>	<p style="text-align: right;">Page 221</p> <p>1 that I will not permit. It's inappropriate. It's 2 improper.</p> <p>3 (Sidebar ends.)</p> <p>4 THE COURT: So the objection to that question 5 is sustained.</p> <p>6 BY MR. THACKSTON:</p> <p>7 Q Dr. Moline, you gave the example, and I don't 8 want anybody's name, I don't want you to identify 9 anybody, when you wrote your testimony for congress, 10 did you take portions directly from a report for a case 11 you're involved in?</p> <p>12 A I don't believe I took anything verbatim. I may 13 have looked to see an illustrative case and I wouldn't 14 have remembered all the facts of the medical course 15 which I think was described, nor the exposure scenario, 16 so I would have had to refer to something.</p> <p>17 Q You would have -- you would have said where 18 the person worked, right, what their job was?</p> <p>19 A I would have said the category. I wouldn't have 20 said what company.</p> <p>21 Q I mean, worked for a textile mill, tobacco 22 company; in fact, the example you give here in the 23 testimony, you say "she worked in a textile industry 24 working with polyester and cotton yarns, also worked 25 for tobacco company as a packer." Right?</p>

Page 222	Page 224
<p>1 A Correct.</p> <p>2 Q And you would have written a report for</p> <p>3 someone in her case making those kinds of statements,</p> <p>4 in your report you would also say what her jobs were,</p> <p>5 right?</p> <p>6 A If I had written a report on her, yes.</p> <p>7 Q And you wouldn't know if -- in another</p> <p>8 context, outside of the particular lawsuit where they</p> <p>9 were discussing the claims and questions were asked,</p> <p>10 you wouldn't know whether she filed another claim or</p> <p>11 someone on her behalf filed another claim in another</p> <p>12 context saying she was exposed to asbestos on her job?</p> <p>13 You just wouldn't have that information, would you?</p> <p>14 A If she had made -- are you saying like a workers'</p> <p>15 compensation claim?</p> <p>16 Q Yes.</p> <p>17 A I mean, typically I'm provided with all that kind</p> <p>18 of information or an individual is asked about that</p> <p>19 during their deposition, where they're asked if they've</p> <p>20 ever filed any type of lawsuit or filed a workers'</p> <p>21 compensation claim. So I might not have had all the</p> <p>22 documents, but I would have had some information.</p> <p>23 Q Would that be relevant if somebody had a</p> <p>24 worker's comp claim where they were saying they were</p> <p>25 exposed to asbestos on-the-job?</p>	<p>1 wasn't saying anything else. I just wanted to make</p> <p>2 sure if it went further, there was someone's name here.</p> <p>3 Q I understand. The fact that there is a</p> <p>4 lawsuit is public record, right? I mean, this person's</p> <p>5 lawsuit is a public record. And at some point you will</p> <p>6 give a deposition in that case, as far as you know,</p> <p>7 right?</p> <p>8 A Depends on the state, and it could be, yes.</p> <p>9 Q Okay. And I just want you to look at this</p> <p>10 and see, you recognize the type of document that it is,</p> <p>11 North Carolina Industrial Commission, and I just want</p> <p>12 you to read what the next line says?</p> <p>13 A Where am I looking?</p> <p>14 Q It says, "Claim by employee."</p> <p>15 A Okay.</p> <p>16 Q "Representative or dependent."</p> <p>17 A Okay.</p> <p>18 Q "For benefits for lung disease, including</p> <p>19 asbestosis, silicosis and byssinosis."</p> <p>20 A Okay.</p> <p>21 Q "The use of this form is required under the</p> <p>22 provisions of the Workers' Compensation Act."</p> <p>23 A Okay.</p> <p>24 Q Right?</p> <p>25 Employer, and I won't say the name of the</p>
Page 223	Page 225
<p>1 A If they said that they were exposed and they had</p> <p>2 exposure, sure.</p> <p>3 Q So I'd ask you to look at page -- this is</p> <p>4 from the North Carolina Industrial Commission, and down</p> <p>5 at the bottom left-hand corner you see NCIC, July 24,</p> <p>6 2019, 1 of 25 pages. If you look at page 13 --</p> <p>7 A This is not fully redacted. The name is</p> <p>8 throughout this document.</p> <p>9 Q The name what?</p> <p>10 A The name of the individual is on many pages here.</p> <p>11 It's not fully redacted.</p> <p>12 Q Well, it's not going to be seen by anybody</p> <p>13 other than --</p> <p>14 A Okay.</p> <p>15 Q -- counsel.</p> <p>16 A I see an individual's name here. I just wanted to</p> <p>17 bring that to your attention.</p> <p>18 Q I guess you can see through it.</p> <p>19 A No. No. I just turned and I saw someone's name</p> <p>20 on page 12, so I just was making sure you knew that. I</p> <p>21 didn't know who would see it.</p> <p>22 Q You're the retained expert in this case.</p> <p>23 They're the law firm in this case. The judge isn't</p> <p>24 going to give it to anybody else --</p> <p>25 A Sir, I was just saying the name was there. I</p>	<p>1 employer out loud, and it has dates of employment?</p> <p>2 MR. PURDY: Mr. Thackston, can I ask what</p> <p>3 page you're on?</p> <p>4 MR. THACKSTON: Page 13.</p> <p>5 A Okay.</p> <p>6 Q And then on the next page it has employment</p> <p>7 history and dates, and it says, "If you were exposed to</p> <p>8 the listed substances while working for this employer.</p> <p>9 Describe in detail the exposures employee was exposed</p> <p>10 to the hazards of asbestos-containing products while</p> <p>11 employed by this employer."</p> <p>12 That's on page 14 of 25 right in the middle</p> <p>13 of the page. You see that?</p> <p>14 A I don't know where you're pointing to.</p> <p>15 MR. THACKSTON: Your Honor, may I publish?</p> <p>16 A In the bottom half?</p> <p>17 Q Right in the middle.</p> <p>18 THE COURT: Yes. Go right ahead.</p> <p>19 BY MR. THACKSTON:</p> <p>20 Q Right?</p> <p>21 "Employee was exposed to the hazards of</p> <p>22 asbestos-containing product while employed by this</p> <p>23 employer." Right?</p> <p>24 A Yes.</p> <p>25 Q So if this is the same person who was your</p>
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<p>1 A Correct.</p> <p>2 Q And you would have written a report for</p> <p>3 someone in her case making those kinds of statements,</p> <p>4 in your report you would also say what her jobs were,</p> <p>5 right?</p> <p>6 A If I had written a report on her, yes.</p> <p>7 Q And you wouldn't know if -- in another</p> <p>8 context, outside of the particular lawsuit where they</p> <p>9 were discussing the claims and questions were asked,</p> <p>10 you wouldn't know whether she filed another claim or</p> <p>11 someone on her behalf filed another claim in another</p> <p>12 context saying she was exposed to asbestos on her job?</p> <p>13 You just wouldn't have that information, would you?</p> <p>14 A If she had made -- are you saying like a workers'</p> <p>15 compensation claim?</p> <p>16 Q Yes.</p> <p>17 A I mean, typically I'm provided with all that kind</p> <p>18 of information or an individual is asked about that</p> <p>19 during their deposition, where they're asked if they've</p> <p>20 ever filed any type of lawsuit or filed a workers'</p> <p>21 compensation claim. So I might not have had all the</p> <p>22 documents, but I would have had some information.</p> <p>23 Q Would that be relevant if somebody had a</p> <p>24 worker's comp claim where they were saying they were</p> <p>25 exposed to asbestos on-the-job?</p>	<p>1 wasn't saying anything else. I just wanted to make</p> <p>2 sure if it went further, there was someone's name here.</p> <p>3 Q I understand. The fact that there is a</p> <p>4 lawsuit is public record, right? I mean, this person's</p> <p>5 lawsuit is a public record. And at some point you will</p> <p>6 give a deposition in that case, as far as you know,</p> <p>7 right?</p> <p>8 A Depends on the state, and it could be, yes.</p> <p>9 Q Okay. And I just want you to look at this</p> <p>10 and see, you recognize the type of document that it is,</p> <p>11 North Carolina Industrial Commission, and I just want</p> <p>12 you to read what the next line says?</p> <p>13 A Where am I looking?</p> <p>14 Q It says, "Claim by employee."</p> <p>15 A Okay.</p> <p>16 Q "Representative or dependent."</p> <p>17 A Okay.</p> <p>18 Q "For benefits for lung disease, including</p> <p>19 asbestosis, silicosis and byssinosis."</p> <p>20 A Okay.</p> <p>21 Q "The use of this form is required under the</p> <p>22 provisions of the Workers' Compensation Act."</p> <p>23 A Okay.</p> <p>24 Q Right?</p> <p>25 Employer, and I won't say the name of the</p>
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<p style="text-align: right;">Page 226</p> <p>1 example before congress, it appears that they, at 2 least, have made a claim that they were exposed to 3 asbestos in some form other than just in using cosmetic 4 talc personally and as a hairdresser.</p> <p>5 Would you agree?</p> <p>6 MR. PURDY: I'm going to object, your Honor.</p> <p>7 THE COURT: Objection sustained.</p> <p>8 BY MR. THACKSTON:</p> <p>9 Q Since you put the article out have you had 10 any conversations with any of the lawyers about whether 11 your conclusions were correct with respect to the 12 alleged exposures by the plaintiffs to cosmetic talc 13 only?</p> <p>14 A I haven't had any conversations with that specific 15 question raised to me.</p> <p>16 Q And no one has contacted you and said look, 17 if case 6 or case 3 is our case, there's something you 18 ought to know, there's some other allegations; nobody's 19 given you that kind of information?</p> <p>20 A No.</p> <p>21 Q Let me get straight, why is it that you 22 couldn't -- let me back up.</p> <p>23 So yesterday when you were on direct 24 examination and you were being asked questions about 25 Italian talc studies, you had various criticisms of the</p>	<p style="text-align: right;">Page 228</p> <p>1 it out there and say here, here's what I'm basing my 2 conclusion on, I'm going to be transparent, here's a 3 website, here's all the documents, case 1, case 2, case 4 3, I want everybody to know what I'm basing my 5 conclusion on that these people have meso and their 6 only known exposure was to cosmetic talc.</p> <p>7 You could do that, right?</p> <p>8 A Theoretically, yes.</p> <p>9 Q And in your deposition you were asked 10 specifically, hey, I think I recognize this case, case 11 whatever, case number 3, the case of so and so. And 12 you refused to answer that, right?</p> <p>13 A I am of the opinion that I am not identifying any 14 of the individuals in my paper by name as following 15 standard medical and research practice.</p> <p>16 Q But you would agree, you don't have any 17 contact with these people from the standpoint of a 18 medical practice. You are not their physician. You 19 are only consulting in their litigation, right?</p> <p>20 A They still have a right to privacy with respect to 21 the medical community and the medical literature at 22 large, and I am respecting that privacy.</p> <p>23 Q I understand.</p> <p>24 But you understand, you would agree that 25 people involved in their case because they represent</p>
<p style="text-align: right;">Page 227</p> <p>1 studies, right?</p> <p>2 A Yes.</p> <p>3 Q And one of the criticisms was that it wasn't 4 transparent, that one of the authors had gotten money 5 from Johnson & Johnson or somebody and it wasn't 6 transparent that they had had a role in some input in 7 the study, right?</p> <p>8 A Right. That there was no disclosure that the 9 company had had a role in the development protocol and 10 writing of the paper.</p> <p>11 Q And you think that if someone's going to put 12 out an article where they're going to say there are 13 no -- we find no mesothelioma among this group of 14 people, that they ought to make the information 15 available that they're basing that on so other medical 16 professionals or others can critique that, right?</p> <p>17 A I said that they should let that information that 18 they were contacted by a company who approved the 19 protocol and was involved in the writing of the paper, 20 they should make the readers aware of that, yes.</p> <p>21 Q And so in your situation, this is all 22 information that's been available to all the people 23 involved in the cases, it would be possible for you to 24 have someone redact, even someone that worked for one 25 of the firms, redact any personal information and put</p>	<p style="text-align: right;">Page 229</p> <p>1 someone who's been sued already have access to the 2 medical records, they have access to everything you 3 have access to, right, the other people involved in the 4 cases, correct?</p> <p>5 A Yes.</p> <p>6 Q And you would agree with me, wouldn't you, 7 that either before or after you published the paper, 8 other people who might have knowledge of those cases 9 never had an opportunity for input in whether or not 10 those people had other alleged exposures to asbestos; 11 fair?</p> <p>12 A I did not consult with any attorneys in the 13 preparation of this paper. I based it on the 14 information I had, which was clearly stated in the 15 methods of this paper in terms of how I obtained the 16 data. I did not have conversations with any other 17 individuals apart from my co-authors who had access to 18 the same data I did.</p> <p>19 Q And if somebody writes a letter to the editor 20 and says well, I think I recognize, I can't say for 21 sure because they won't identify the person, but if 22 that's this case, I'll call it B, then there certainly 23 were other sworn allegations of exposure in that case, 24 so the premise that there was no other exposure to 25 asbestos might not be valid; you couldn't really take</p>

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<p style="text-align: right;">Page 234</p> <p>1 it's continued for the past, what is it, 13 years. 2 I've certainly continued to learn more every year. 3 Q And this was published January 2020, I guess 4 you submitted it sometime at the end of 2019? 5 A It was published online in October 2019. 6 Q And your publication online in October 2019 7 was your first effort to get the word out that you 8 thought that occupational medicine doctors ought to ask 9 people about -- ask people about exposure to cosmetic 10 talc, right? 11 A This was my first paper, yes, about this 12 particular topic. I've written 70 odd other papers on 13 other topics. I do more than just this in my 14 profession. 15 Q I understand. 16 But you thought it was, that in 2007 you were 17 convinced that you thought cosmetic talc was causing 18 mesothelioma among people who were exposed to it even 19 getting haircuts. You waited 13 years to try to get 20 that word out. 21 Is that what you're telling me? 22 A Okay. I was presented with a question in 2007. I 23 began looking at it in 2007. And in order to write a 24 paper you need to accumulate enough folks, and I also 25 needed to have enough time set aside to write the</p>	<p style="text-align: right;">Page 236</p> <p>1 MR. THACKSTON: Your Honor, I don't know what 2 time you want to stop. I'm at a -- 3 THE COURT: Breaking point? 4 MR. THACKSTON: -- transition point. 5 THE COURT: About how much longer do you 6 anticipate? 7 MR. THACKSTON: I think I've only got two 8 more topics, your Honor, so maybe I can clean it up 9 tonight, do it quickly in the morning. 10 THE COURT: Dr. Moline, can you come tomorrow 11 morning? 12 THE WITNESS: Yes. 13 THE COURT: Thank you. 14 Members of the jury, we'll finish up now for 15 today. Please place your notebooks in the envelopes 16 provided. Leave them with the officer on the way out. 17 They'll be locked in my office overnight. No one has 18 access to them. 19 No discussions with regard to this case, 20 including the testimony you heard this afternoon. No 21 research of any kind whatsoever. 22 We'll see you tomorrow morning at 8:45. 23 Hopefully we can start by 9. 24 Dr. Moline, can you be here by 9? 25 THE WITNESS: Sure. I can be here by 9. I</p>
<p style="text-align: right;">Page 235</p> <p>1 paper. And there are other things that go on in one's 2 life and there are a whole bunch of papers I'd like to 3 be publishing that I don't have the time to write 4 about. 5 So it took a while. We worked on this paper 6 starting in, goodness gracious, 2017 I think we started 7 writing this paper. There was some interruptions. So 8 it takes a while to get everything together to write a 9 paper, but it also takes time to think about how you're 10 going to write a paper. 11 It isn't just when you start looking at a 12 question that you say, oh, let me write a paper. You 13 don't have enough information or enough to make it 14 meaningful. 15 Q Well, short of writing a paper and trying to 16 get it published, you didn't write a letter to FDA or 17 anyone else saying hey, I'm an occupational medicine 18 specialist, I think that cosmetic talc is causing 19 mesothelioma in people that use it at home or get 20 haircuts and I think you ought to do something about 21 it; you didn't write a letter like that to the FDA, did 22 you? 23 A I didn't write a letter to FDA. I have given 24 lectures to my colleagues about that, but I did not 25 write a letter to the FDA.</p>	<p style="text-align: right;">Page 237</p> <p>1 can get here earlier if you want. 2 THE COURT: 8:45, be ready to start at 9. 3 Okay. Thank you. 4 (Jury exits.) 5 THE COURT: Off the record. 6 (Proceedings adjourn at 4:15 p.m.) 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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1 CERTIFICATION

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3 I, ANDREA F. NOCKS, C.S.R., License Number
4 30XI00157300, a Certified Court Reporter, in and for the
5 State of New Jersey, do hereby certify the foregoing to
6 be prepared in full compliance with the current
7 Transcript Format for Judicial Proceedings and is a true
8 and accurate non-compressed transcript to the best of my
9 knowledge and ability.

10

Andrea Nocks CCR CRR
11 ANDREA F. NOCKS MARCH 11, 2020

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13 MIDDLESEX COUNTY COURTHOUSE

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